

HINSHAW

& CULBERTSON LLP

September 12, 2013

ATTORNEYS AT LAW

321 South Main Street

Suite 301

Providence, RI 02903

401-751-0842

401-751-0072 (fax)

www.hinshawlaw.com

Honorable John J. McConnell, Jr.
United States District Court
Federal Building and Courthouse
One Exchange Terrace
Providence, RI 02908

Re: *Cosajay v. Mortgage Elec. Registration Systems, Inc.*
USDC (R.I.) C.A. No. 10-442

Dear Judge McConnell:

In this Court's 9/3/13 Order dissolving and denying the injunction ("Order"), the Court requested that the parties each identify two cases from the twenty-two cases in which defendants had filed motions to dismiss. The *Cosajay* Defendants filed a motion to dismiss based on Ms. Cosajay's lack of standing in November of 2010. This Court's ruling on Magistrate Judge David L. Martin's June 13, 2011 Report and Recommendation which recommended dismissal based on the threshold jurisdictional issue of standing, will likely facilitate the resolution of many other cases pending on the *In re Mortgage Foreclosure Cases* docket as it will provide guidance to the parties.

The First Circuit noted in its decision, "[i]n the course of dealing with these matters [Rule 65(a)(1)], the court will reach the subject of the magistrate's year-old recommendation to dismiss the specific case for the mortgagors' lack of standing to object to the assignment to the named foreclosing party." *Fryzel v. Mortgage Electronic Registration Systems, Inc.*, 719 F.3d 40, 45-46 (C.A.1 (R.I.), 2013). The First Circuit correctly concluded that "...the jurisdictional standing objection raised by the mortgagees here is (as we have said) necessarily implicated in the mortgagors' burden to show probable success as a condition of continuing the injunction," and directed this Court to act on the Report and Recommendation "no later" than its order continuing or lifting the injunction imposed on all cases assigned to the *In re Mortgage Foreclosure Cases* docket. *Id.* at 46.

While this Court has dissolved the docket wide injunction, it has yet to issue a decision on the *Cosajay* Report and Recommendation or rule on whether the plaintiff mortgagors have met the threshold jurisdictional requirement to establish their standing to challenge the assignments of mortgage at issue in their cases. (11-mc-88, Doc. No. 2249). Accordingly, Defendants in *Cosajay v. MERS*, C. A. No. 10-442, respectfully request that this Court issue a

decision on Magistrate Judge David L. Martin's June 13, 2011 Report and Recommendation before deciding any later-filed motions to dismiss.

Very Truly Yours,



Maura K. McKelvey
(401) 751-0842
mmkelvey@hinshawlaw.com